



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/714,853	11/15/2000	Steve Litzow	XPWZ-1-1006	5296
25315	7590	05/04/2004	EXAMINER	
BLACK LOWE & GRAHAM, PLLC 701 FIFTH AVENUE SUITE 4800 SEATTLE, WA 98104			THOMPSON JR, FOREST	
			ART UNIT	PAPER NUMBER
			3625	

DATE MAILED: 05/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/714,853

Applicant(s)

LITZOW ET AL.

Examiner

Forest Thompson Jr.

Art Unit

3625

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 February 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 November 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action (See Paper #7). The text of those sections of Title 35, U.S. Code not otherwise provided in a prior Office action will be included in this action where appropriate.
2. This action is responsive to amendment B filed on 02/09/2004 (see Paper #8). Applicant amended the specification, amended claims 1-11, and added new claims 12-24. Claims 1-24 are pending.
3. Claims 1-24 have been examined.

Claim Rejections - 35 USC § 102

4. Claims 1-11 were rejected in Paper #7 under 35 U.S.C. 102(a) as being anticipated by Puri (U.S. Patent No. 6,064,982). Applicant's amendment overcame the prior art. Therefore, examiner withdraws the rejection.
5. Claims 1-24 are rejected under 35 U.S.C. 102(a) as being anticipated by Anderson et al. (U.S. Patent No. 5,974,396).

Claim 1. Anderson teaches:

- a. at least one extensible transaction database for storing flexible representations of product definitions (col. 3 lines 30-40);
- b. at least one system controller for selectively retrieving the stored flexible representation of the product definition (col. 3 lines 30-63); and
- c. an interactive script for presenting to a product vendor an option to refine the flexible representation of the product definition based upon actual purchase transaction data (col. 3 lines 3-7).

Claim 2. Anderson teaches means for comparing one or more commoditized sellable units represented by the flexible representations stored in the at least one extensible transaction database with other commoditized sellable units derived from vendor offers (col. 7 lines 5-64).

Claim 3. Anderson teaches:

- a. providing a customer database comprising names and purchasing habits of customers (col. 6 lines 24-48; col. 7 line 65 – col. 8 line 14);
- b. providing a transaction database comprising definitions of products, the appropriate sales unit for products, and, a unique identifier associated with the products (col. 6 lines 24-48; col. 7 line 65 – col. 8 line 14);
- c. analyzing customer's bills by the steps of dissecting the bills into component line item transactions, associating each the line item transactions with the corresponding product identifiers from the transaction database, determining the amount of the

products purchased in terms of their respective sales units, determining the price of the line item transaction, associating the line item transaction with the customer, and updating the purchase habit information for the customer in the customer database accordingly (Abstract; col. 2 line 56 – col. 3 line 19).

Claim 5. Anderson teaches determining one or more demographic factors desirable for predicting purchase behavior, and analyzing the compiled purchase habit data associated with a customer for the presence of one or more of the demographic factors (Abstract).

Claim 6. Anderson teaches identifying one or more demographic factors desirable for predicting purchase behavior that are not derived from the compiled purchase habit data, and obtaining such demographic factors from sources other than the compiled purchase habit data (Abstract; col. 3 lines 30-40), through the teachings of product information is gathered that uniquely identifies a specific product by type and manufacturer and grouped into generic product clusters, means for receiving consumer identifying data and product purchase transactional data, means for grouping that data into clusters of information based on predefined criteria, means for storing the cluster information in the database, and means for analyzing the stored cluster information to determine buying behaviors of retail consumers.

Claim 7. Anderson teaches:

a. creating a customer database, comprising the steps of enrolling customers into a closed market, inputting a unique identifier to one or more of the enrolled customers, and creating an initial record containing the identity for one or more of the enrolled customers (col. 8 lines 20-35);

iv. recording purchase history data derived from actual purchases made by one or more enrolled customers and associating that data with their respective unique identifiers (col. 7 line 51 – col. 8 line 47);

b. creating a transaction database comprising the steps of defining one or more of the products offered by one or more of the vendors; creating a record corresponding to one or more defined products; identifying a sales unit appropriate to one or more of the products; inputting a unique identifier to one or more of the products; and categorizing one or more of the products; and creating a vendor database, comprising the steps of creating a record corresponding to one or more vendors and inputting a unique identifier to one or more of the vendors (col. 7 line 51 – col. 8 line 47).

Claim 8. Anderson teaches:

- receiving a vendor's offer to sell a product to one or more of the customers (Abstract);
- comparing the vendor's offer against the purchase history data for one or more of the customers (Abstract).

Art Unit: 3625

Claim 9. Anderson teaches communicating the vendor's offer to those customers whose purchase history data suggest that the vendor's offer is likely to be acceptable (Abstract), as taught by *targeting of specific consumers with marketing and other promotional literature is based on consumer buying habits, needs, demographics, etc.*

Claim 10. Anderson does not explicitly teach calculating the profit the vendor is likely to realize if an offer is accepted; nor calculating the number of units sold the vendor is likely to realize by communicating the vendor's offer to those customers whose purchase history data suggest that the vendor's offer is likely to be acceptable. However, Anderson does explicitly teach (col. 2 line 67 – col. 3 line 7) *Product, consumer, and transactional data are maintained in a relational database. Targeting of specific consumers with marketing and other promotional literature is based on consumer buying habits, needs, demographics, etc. A retailer queries the relational database using selected criteria, accumulates data generated by the database in response to that query, and makes business and marketing decisions based on that accumulated data.* This teaching provides the functionality necessary to calculate the profit the vendor is likely to realize if an offer is accepted, and calculate the number of units sold the vendor is likely to realize by communicating the vendor's offer to those customers whose purchase history data suggest that the vendor's offer is likely to be acceptable.

Claim 12. Claim 12 is written as a method and contains essentially the same limitations as claim 3; therefore, the same rejection is applied.

Claim 13. Claim 13 is written as a data processing system and contains essentially the same limitations as the combination of claims 7 and 8; therefore, the same rejection is applied.

Claim 14. Anderson teaches collecting data from a plurality of consumers' bills, analyzing the collected data, predicting purchases the consumers may be likely to make based on the analysis, and designing offers to the consumers based on the predicted purchases (Abstract).

Claim 15. Anderson teaches the step of collecting is one selected from the group of data collection methods comprising:

- collecting manually entered data (col. 12 lines 63-67);
- collecting optical character recognition data (col. 7 lines 22-51); and
- collecting electronic data from a data processing system (col. 6 lines 5-22).

Claim 16. Anderson teaches:

- encoding the data collected from the bills into standardized constituent parts (col. 6 lines 24-44); and
- presenting a good or service in terms of basic units independent of the identity of the vendor(col. 6 lines 24-44), in the teaching of providing consumer product transaction data for analysis by users/vendors to be used by users/vendors to determine, e.g., buying habits based on specific consumer demographics, for formulating marketing strategies.

Claim 17. Anderson does not explicitly teach aggregating and comparing offers. However, Anderson does teach (Abstract) *Consumer retail transactions are analyzed in terms of product and/or consumer clusters to determine relationships between the consumers and the products. Product, consumer, and transactional data are maintained in a relational database. Targeting of specific consumers with marketing and other promotional literature is based on consumer buying habits, needs, demographics, etc. A retailer queries the database using selected criteria, accumulates data from the database in response to that query, and makes prudent business and marketing decisions based on that response.* This disclosure encompasses aggregating and comparing offers through the analyses of consumer retail transactions for these offers.

Claim 18. Anderson teaches:

- encoding data from vendor offers into one or more of the same standardized constituent parts (Abstract), in the teaching of *Product information is gathered that uniquely identifies a specific product by type and manufacturer and grouped into generic product clusters;*
- comparing the encoded data from vendor offers against the encoded data collected from the bills (Abstract), in the teaching *Consumer retail transactions are analyzed in terms of product and/or consumer clusters to determine relationships between the consumers and the products;* and

- based at least in part upon that comparison, assembling a list of customers whose collected bill data suggests they are likely to purchase the product or service offered (Abstract), in the teaching *Targeting of specific consumers with marketing and other promotional literature is based on consumer buying habits, needs, demographics, etc. A retailer queries the database using selected criteria, accumulates data from the database in response to that query, and makes prudent business and marketing decisions based on that response.*

Claim 19. Claim 19 is written as a method and contains essentially the same limitations as claim 1; therefore, the same rejection is applied.

Claim 20. Anderson teaches a pricing script that allows the vendor to associate the flexible representations by a combination of multiple commoditized sellable units (col. 3 lines 3-7).

Claim 21. Anderson teaches a means for comparing one or more of the commoditized sellable units represented by the flexible representations with other commoditized sellable units derived from vendor offers (col. 7 lines 5-64).

Claim 22. Claim 22 is written as a system and contains the same limitations as claim 7; therefore, the same rejection is applied.

Claim 23. Claim 23 is written as a method and contains essentially the same limitations as claim 12; therefore, the same rejection is applied.

Claim 24. Claim 24 is written as a system and contains essentially the same limitations as claim 12; therefore, the same rejection is applied.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 4 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson et al. (U.S. Patent No. 5,974,396) as applied to claims 3 and 7 above, and further in view of Official Notice.

Claim 4. Anderson teaches augmenting the customer data (col. 8 lines 21-35), e.g., assigning a membership identification number to be associated with customer information forwarded and stored in a database. Anderson does not explicitly teach requesting the customer's consumer credit report from a credit reporting agency; receiving the consumer credit report; inputting the contents of the consumer credit report; nor associating the inputted contents with the customer's unique variable identifier. However, Official Notice is taken that creditors and potential creditors typically request the customer's consumer credit report from a credit reporting agency; receive the consumer credit report; input the contents of the consumer credit report into a database; and associate the inputted contents with the customer's unique variable identifier. Creditors typically check the credit worthiness of potential customers to provide some assurance that the customer will compensate/pay the creditor for

Art Unit: 3625

products/services delivered to the customer. Therefore, it would have been obvious to one skilled in the art at the time the invention was made to modify the teaching of Anderson to explicitly request the customer's consumer credit report from a credit reporting agency, receive the consumer credit report, input the contents of the consumer credit report into a database, and associate the inputted contents with the customer's unique variable identifier, as taught by old and well known art, for the motivation of compiling a customer database and safeguarding their investment.

Claim 11. Anderson does not explicitly teach selecting values reflecting the acceptable profit and the acceptable number of units sold the vendor is likely to realize from the vendor's offer; nor adjusting the terms of the vendor's offer in light of the likely profit and number of units sold. However, Official Notice is taken that vendors are in business and usually strive to achieve profitability over their competitors and business success. Vendors typically develop marketing schemes in the attempt to achieve a particular level of profit and sales for their products. To accomplish this, a vendor will establish his prices for his products to achieve what he considers an acceptable level of profit based on the number of units sold. Therefore, it would have been obvious to one skilled in the art at the time the invention was made to modify the teaching of Anderson to explicitly select values reflecting the acceptable profit and the acceptable number of units sold the vendor is likely to realize from the vendor's offer, and adjust the terms of the vendor's offer in light of the likely profit and number of units sold, as taught in old and well known art, for the motivation of facilitating commerce and achieving financial success.

Response to Arguments

8. Applicant's arguments with respect to claim 1-11 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

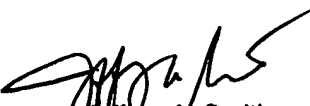
10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Forest Thompson Jr. whose telephone number is (703) 306-5449. The examiner can normally be reached on 6:30 AM-3:30 PM.

Art Unit: 3625

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on (703) 308-1065. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

FT 
04/26/2004


Jeffrey A. Smith
Primary Examiner